STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER 410,	)	
Charging Party,	)	Case No. LA-CE-3345
v.	)	PERB Decision No. 1106
MORENO VALLEY UNIFIED SCHOOL DISTRICT,	)	May 19, 1995
Respondent.	)	

Appearances: California School Employees Association by Arnie R. Braafladt, Attorney, for California School Employees Association and its Chapter 410; O'Melveny and Myers by Todd R. Wolffson, Attorney, for Moreno Valley Unified School District.

Before Blair, Chair; Garcia and Johnson, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Moreno Valley Unified School District (District) to the proposed decision (attached) of a PERB administrative law judge (ALJ). In his decision, the ALJ found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when it unilaterally changed the shift

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise

hours of two custodians.

The Board has reviewed the entire record in this case, including the proposed decision, transcript, exhibits, the District's exceptions and the response thereto filed by the California School Employees Association and its Chapter 410. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

DISCUSSION

Among the exceptions raised on appeal,[2] the District contends that the ALJ failed to consider that the parties' collective bargaining agreement (CBA) authorizes it to transfer employees. The District argues that the change in the two custodian's shift assignments from day to night was a "transfer" between shifts.

Article 18 of the parties' CBA defines a transfer as "a movement of a bargaining unit member from one position or work site to another, . . ." The two custodians in question were not

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> to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[2]The ALJ properly addressed the remainder of the issues the District raises on appeal. Therefore, it is unnecessary for the Board to restate these arguments.

reassigned to different work sites and there is no indication that they were placed in another position or classification. Therefore, the District's contention that the change in the custodian's shift assignments was a transfer is rejected,

ORDER

Based upon the findings of fact and conclusions of law, and the entire record in this case, the Board finds that the Moreno Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c), by its unilateral change of the shift assignments of Manuel Mojarro (Mojarro) and Caroline Gunns (Gunns), and by its refusal to negotiate the shift changes with the California School Employees Association and its Chapter 410 (CSEA).

Pursuant to EERA section 3541.5(c), it is hereby ordered that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with CSEA, the exclusive representative of the District's classified employees, by unilaterally changing shift assignments of employees.

2. Refusing to negotiate shift changes of bargaining unit employees upon CSEA's demand.

3. Denying CSEA rights guaranteed by EERA, including the right to represent its members.

4. Interfering with employees in the exercise of their rights guaranteed by EERA, including the right to be represented by their chosen representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. Rescind the unilateral change of shift assignment policy insofar as it applies to incumbent employees.

2. Upon CSEA's request, immediately meet and negotiate with CSEA regarding involuntary shift reassignments.

3. Upon CSEA's request, return custodians Mojarro and Gunns to the shift assignments they held prior to March 1993.

4. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees are customarily place, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent for the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, defaced, altered or covered with any other material.

5. Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance

with the Director's instructions. All reports to the Regional Director shall be served concurrently on the charging party herein.

Member Johnson joined in this Decision.

Member Garcia's concurrence and dissent begins on page 6.

GARCIA, Member, concurring and dissenting: I concur with the portion of the majority opinion affirming a violation of Educational Employment Relations Act (EERA) section 3543.5(b) and (c). However, I dissent from that part of the majority opinion which affirms a violation of EERA section 3543.5(a). The employees were not parties in interest to the charge, complaint or hearing.

The record does not show that the employees objected to the changes in their assignments or schedules or that they sought the California School Employees Association and its Chapter 410's (CSEA) representation and it was denied. There is no evidence in the record that shows a violation of employee rights. To the contrary, since the case was essentially a contract interpretation dispute that was not deferred to the grievance agreement,[1] the record shows that CSEA protected only its interests before the Public Employment Relations Board.

[1]The regional attorney denied the Moreno Valley Unified School District's (District) motion to dismiss and defer to the contractual grievance procedure on the ground that CSEA had no standing as a grievant. In the District's brief in support of exceptions, it states that the District offered to submit the case to arbitration, but CSEA refused. Whatever the reason, the case was not submitted to the contractual grievance procedure. Although individual employees have standing to file grievances under the contract, the record contains no evidence that any such grievance was filed by the employees.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-3345, California School Employees Association and its Chapter 410 v. Moreno Valley Unified School District, in which all parties had the right to participate, it has been found that the Moreno Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated EERA by unilaterally reassigning unit members to different work shifts.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Failing and refusing to negotiate in good faith with the California School Employees Association and its Chapter 410 (CSEA), the exclusive representative of the District's classified employees, by unilaterally changing shift assignments of employees.

2. Refusing to negotiate shift changes of bargaining unit employees upon CSEA's demand.

3. Denying CSEA rights guaranteed by EERA, including the right to represent its members.

4. Interfering with employees in the exercise of their rights guaranteed by EERA, including the right to be represented by their chosen representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. Rescind the unilateral change of shift assignment policy insofar as it applies to incumbent employees.

2. Upon CSEA's request, immediately meet and negotiate with CSEA regarding involuntary shift reassignments.

3. Upon CSEA's request, return custodians Manuel Mojarro and Caroline Gunns to the shift assignments they held prior to March 1993.

Dated: _____ MORENO VALLEY UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER 410,	)	
Charging Party,	)	Unfair Practice Case No. LA-CE-3345
v.	)	
MORENO VALLEY UNIFIED SCHOOL DISTRICT,	)	PROPOSED DECISION (10/17/94)
Respondent.	)	

Appearances: California School Employees Association by Daniel Torres, Jr., Labor Relations Representative, for California School Employees Association and its Chapter 410; O'Melveny & Myers, by Todd R. Wulffson, for Moreno Valley Unified School District.

Before Gary M. Gallery, Administrative Law Judge.

PROCEDURAL HISTORY

The California School Employees Association and its Chapter 410 (CSEA) filed this unfair practice charge on September 1, 1993. After investigation, and on December 31, 1993, the deputy general counsel of the Public Employment Relations Board (PERB or Board) issued a complaint against the Moreno Valley Unified School District (District). The complaint alleged the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act) from the following conduct.[1] It was alleged that before March of 1993, custodian

[1]The Act commences with section 3540 of the Government Code. All statutory references are to the Government Code, unless otherwise noted. Section 3543.5 provides in pertinent part that it shall be unlawful for a public school employer to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

shift hours were determined on a voluntary basis, and the District's policy was to have some custodians work the day shift. The complaint alleged this policy was changed in March of 1993 by reassigning a number of custodians from day to evenings. Specifically it was alleged that Manuel Mojarro's (Mojarro) hours were changed to the evening shift and Caroline Gunns'(Gunns) hours were changed to 12:00 p.m. to 8:30 p.m. This change was alleged to have been done without notice to CSEA or affording CSEA an opportunity to negotiate the decision to implement the change or the effects of the change in policy. The complaint alleged further violations of the Act in that on March 10 and again April 29, 1993, CSEA requested that the District return to the status quo until negotiations concluded in agreement, and that the District refused both requests. The District's refusal to bargain the shift change was alleged to be a further violation of EERA section 3543.5(a), (b) and (c) .

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discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

The District's answer, filed on January 31, 1994, made admissions and denials and raised affirmative defenses that will be referenced in other parts of this proposed decision.[2]

A PERB conducted settlement conference did not resolve the dispute.

Formal hearing was held on June 30, 1994, in Los Angeles. The parties filed post hearing briefs, and the matter was submitted on August 12, 1994.

FINDINGS OF FACT

CSEA is the exclusive representative of an appropriate unit of employees, including custodians within the meaning of EERA. The District is a public school employer within the meaning of the Act.

By resolution adopted in February 1992, the District laid off six custodians effective the end of March 1992.

Mojarro is a custodian for the District at the Butterfield Elementary School, where, since 1988, he has been assigned the shift of 6:30 a.m to 3:00 p.m.[3] On March 17, 1993, the District caused a change in Mojarro's workday. His new work time was 2:30 p.m. to 11:00 p.m. The reasons stated on the change form,

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[2]Included in the District defenses was the assertion that the dispute was subject to final and binding arbitration and should be deferred. This assertion was made during PERB's investigation of the unfair practice charge and was rejected by the regional attorney on the grounds that CSEA did not have the right to grieve the shift change. The regional attorney relied upon Inglewood Unified School District (1991) PERB Order No. Ad-222. The deferral defense is rejected upon the same ground.

[3]Many of the facts set forth hereafter were by stipulation of the parties.

was "due to program needs, employee's hours have been changed to the evening shift. Employee is therefore now eligible for the 9% shift differential pay."

Caroline Gunns (Gunns), a custodian at Valley View High School since 1991, worked the 8:30 a.m. to 5:00 p.m. shift. Gunns was notified on March 26, 1993,[4] that her route assignment and hours were to be changed effective March 1, 1993. Her new hours were 12:00 p.m. to 8:30 p.m. The reason for the change was stated:

> This change is required due to the loss of a half custodian and the addition of new portables to our campus. The work load is much heavier in the afternoon/evening than it formally was prior to these changes.

Both Mojarro and Gunns, received the contractual entitlement of 9 percent shift differential pay upon their reassignment.

Prior notice of either action was not given to CSEA.

CSEA wrote to the District on March 10 complaining that the District had changed the shift assignment of three custodians from day to night without notice to CSEA or the opportunity for CSEA to negotiate over the decision or its effects.[5] CSEA demanded that the District cease and desist such action and return to the status quo until the parties reached agreement through negotiations.

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[4]A11 calendar references are to 1993, unless noted otherwise.

[5]There is no evidence of a third shift change. The complaint noted only the two named employees, Mojarro and Gunns.

The District, through Patricia Hogan-Newsome (Newsome), responded on April 20. Newsome wrote:

> I direct your attention to Article 3 of the Collective Bargaining Agreement, which provides that the District has the "exclusive right and power to discontinue, in whole or in part, temporarily or permanently, without further bargaining as to the decision or the effects thereof. . . . to determine the method, means, and services provided, to determine the staffing patterns and the number and kinds of personnel required, . . . to assign . . . employees." . . .

CSEA responded on April 29 and cited Article 3 in part by stating:

> Let me direct your attention to Article 3 of the Collective bargaining Agreement which states in pertinent part: "All matters not within the scope of representation as set forth in the Government Code, Section 3543.2, or not limited by the express terms of this Agreement, are reserved by the District."

CSEA noted that section 3543.2 provides in part that the "scope of representation shall be limited to matters relating to wages, hours of employment and other terms and conditions of employment."

CSEA further cited Article 13 which provides:

> A classified employee shall be given annual notice of his/her assignment for the forthcoming year by July 1. In the event that changes in such assignment are proposed, the employee affected shall be notified promptly. Any change shall be in accordance with applicable law.

The District responded on May 10. It cited provisions of the collective bargaining agreement giving the District the right to "'determine the staffing patterns and the number and kinds of

personnel required' without bargaining about either the decision or the effects of the decision to change such staffing patterns." The District went on to state:

> Moreover, the District has the right to move "a bargaining unit member from one position or work site to another" in order "to establish or maintain necessary capabilities at any school." See Agreement, Article 3 and 18. While we do not agree that shift changes are transfers and/or subject to Article 18 of the Agreement, the District has in fact complied with Article 18 (and all other applicable sections of the Agreement) in making changes of shift assignments.

Thus, on two occasions of CSEA's request to bargain the change in shift assignments, the District refused.

Article 3 of the agreement provides in part:

> Section 1. All matters not within the scope of representation as set forth in the Government Code, Section 3543.2, or not limited by the express terms of this Agreement, are reserved by the District. Except as limited by the express terms of this Agreement, it is agreed that such reserved rights include, but are not limited to the exclusive right and power to discontinue, in whole or in part, temporarily or permanently, without further bargaining as to the decision or the effects thereof, any of the following: the Board's sole right to manage the District and direct the work of its employees, to determine the method, means, and services provided, to determine the staffing patterns and the number and kinds of personnel required, to determine the assignment goals, objectives and performance standards, to decide on the building, location, or modification of a facility, to determine the budget and methods of raising revenue, to subcontract work or operations except where expressly forbidden by law, to maintain order and efficiency, to hire, assign, to evaluate, promote, discipline, discharge for cause, layoff for lack of work or lack of funds, and transfer employees.

> The foregoing rights of management are not intended to be an all inclusive list, but do indicate the type of matters which are inherent to management.

Article 18 defines transfers as:

> . . . a movement of a bargaining unit employee from one position or work site to another, but shall not include any redistribution of work consistent with Article 14, Subsection (1) . . . .

The District has never moved an employee involuntarily from one shift to another. All previous vacancies have been filled by inside promotions, voluntary transfers, or new hire employees.

The 1992 lay off of employees and the need for reallocation of custodial resources at particular school sites in 1993 was unprecedented.

Charles Sheppard, CSEA representative, testified that at a reopener negotiations session where some changes to Article 18 on transfers were negotiated there may have been conceptual discussions of shift changes, although no proposals were made. At the time he believed that shift changes could be a form of transfer.

ISSUES

The issues in this case are: 1) whether the District's unilateral alteration of the work shift of Mojarro and Gunns was a violation of its duty to bargain in good faith required by the EERA; and 2) whether the District violated its obligation to negotiate in good faith by its refusal to negotiate the shift changes of the two custodians?

CONCLUSIONS OF LAW

An employer's unilateral change in terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate and violative of EERA section 3543.5(c). (Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

To prevail on a complaint of unilateral change, the charging party must establish by a preponderance of the evidence that (1) the employer breached or altered the party's written agreement or own established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change is not merely an isolated breach of the contract, but amounts to a change of policy (i.e., having a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant); Pajaro Valley Unified School District, supra. PERB Decision No. 51; Davis Unified School District, et al. (1980) PERB Decision No. 116.)

Reviewing the forgoing criteria in reverse order, it is not disputed that hours of work, including the time of day the hours are to be worked, are negotiable. A change in hours occurs when there is a change in work shift, and such is negotiable. (Los

Angeles Community College District (1982) PERB Decision No. 252 (Los Angeles).)

The reassignment of Mojarro and Gunns to different shifts was a permanent change, having a generalized and continuing impact upon their terms and conditions of employment. The fact that only two employees were affected does not mitigate against this finding. (Jamestown Elementary School District (1990) PERB Decision No. 795.)

The record is undisputed that the District did not give notice to CSEA of its intent and execution of the reassignment order to Mojarro and Gunns. Indeed, after demand by CSEA, the District refused to negotiate the ordered changes.

The District's first line of defense is waiver by CSEA of the right to negotiate the shift change.

A waiver of the right to bargain a matter within the scope of negotiations must be "clear and unmistakable." The evidence must indicate an intentional relinquishment of the union's rights. (Amador Valley Joint Union High School District (1978) PERB Decision No. 74; San Francisco Community College District (1979) PERB Decision No. 105.) Contract terms will not justify a unilateral management act on a mandatory subject of bargaining unless the contract expressly or by necessary implication confers such a right. (Los Angeles.)

The District argues that the management rights clause (Article 3) grants it full authority to direct the work of its employees, to determine the staffing patterns and the number and

kinds of personnel required, and to assign employees. Therefore, it has the right, without bargaining, to assign employees to particular shifts and to move them to different shifts if the need arises, especially if the health and safety of the students is the reason for the reassignment.

The District contends that the right to determine "staffing patterns" cannot have any reasonable interpretation other than allowing the District to determine how many employees will work at a particular school site, how many shifts there will be at a site, and how many employees will work each shift.

In making these arguments, the District stretches conceded powers to cover the issue at hand. Staffing patterns no doubt includes the number of employees at a particular site, the number of shifts and the number of employees on each shift. Staffing pattern determinations are managerial prerogatives, not subject to negotiations with CSEA. Such determinations, however, do not embrace changes of the shift of individual employees once the initial assignment has been made by the employer. The right to set staffing patterns is not a clear and unmistakable waiver of the right to negotiate shift changes.

The District relies heavily on CSEA witness's testimony that agreed that the District had the right to initially assign shifts to employees. Such agreement, contrary to the District's argument, does not constitute concurrence in the District's authority to change a shift assignment, once it has been made. That is the question in this case.

The right to "assign" employees does not carry with it the inherent right to change a shift assignment after it has been made. There is no evidence offered by the District, other than its assertion, that the right to "assign" employees includes the right to change the shift assignment of an employee. There is no evidence of what the parties meant by the term "assign," when it was negotiated.

The right to assign employees, within Article 3, does not constitute a clear and unmistakable waiver of CSEA's right to negotiate about changes in employees shifts, once they are assigned a shift.[6]

The District also argues that it has authority for shift changes from Article 13, section 1, which provides that "[i]n the event that changes in such assignment are proposed, the employee affected shall be notified promptly." Here the affected employees were notified promptly, and in accordance with section 9 of Article 13, they were paid the shift differential. Thus,

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[6]See Independent Union of Public Service Employees v. Sacramento County (1983) 147 Cal.App.3d 482 [195 Cal.Rptr. 206]. There the management rights clause included the exclusive right to assign its employees, however, the court found that possession of the power to assign employees did not constitute a clear and unmistakable relinquishment of the union's right to meet and confer.

The court said:

> . . . The power to "assign" employees is not inconsistent with the meet and confer requirement. As long as the County meets and confers in good faith, it may assign its employees however it sees fit.

urges the District, CSEA waived its right to negotiate shift changes.

In Los Angeles, the District eliminated a custodian third shift and transferred the incumbents, involuntarily, to a second shift. This was done unilaterally, without notice to the employee's exclusive representative. While there was no management clause in the collective bargaining agreement, there was a so called "zipper" clause and provisions for automatic pay differentials for the second and third shifts. PERB held that the absence of a management rights clause or provision expressly reserving to the District the right to unilaterally change or eliminate shifts did not give the District the right to eliminate the third shift. Nor did PERB find such right necessarily implied.

Article 13 appears to cover reassignment, but does not clearly give the District the right to change shift assignments. The Article mandates the District to give each classified employee annual notice of his/her assignment by July 1 of each year. Notice of proposed changes are to be given to affected employees promptly. The section further provides that "[a]ny change shall be in accordance with applicable law."

The provision expressly requires notice of proposed changes, not actual changes. The change itself must be done "in accordance with applicable law." The applicable law is that changes in shift assignment is a matter within the scope of negotiations, and the employer must give notice and provide the

exclusive representative with an opportunity to negotiate proposed changes. (Los Angeles.)

Article 13 does not present a clear and unmistakable expression of authority for the District to unilaterally make shift changes after an assignment has been made. I conclude that there is no waiver by CSEA of the right to negotiate changes in shift assignment.[7]

The District further argues that charging party has failed to meet the Grant requirement that there be shown a breach of an established past practice or that the District's action would have a generalized or continuing impact upon unit members terms and conditions of employment. The second contention has already been addressed in this discussion. There was a continuing impact on Mojarro's and Gunns' hours of employment, from the time they were reassigned the new shifts.

There is no past practice about involuntary shift changes. All shift changes that took place before the District imposed changes upon Mojarro and Gunns were accomplished by voluntary transfers, promotions or new hires.

Thus, when the District did change Mojarro's and Gunns' shifts, involuntarily, it instituted a new policy on shift changes. The involuntary shift change was a policy never used before, and a policy not the result of an agreement with CSEA.

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[7]Charles Sheppard's failure to pursue amendments to enlarge the application of the transfer provision does not constitute waiver. (Beacon Piece Dyeing and Finishing Co. (1958) 121 NLRB 953 [42 LRRM 1489]; Los Angeles.)

The District unilaterally added a new policy in violation of its duty to bargain in good faith. (See The Regents of the University of California (1991) PERB Decision No. 907-H.)

Inasmuch as the obligation to negotiate in good faith includes the obligation to negotiate shift changes, the employer's absolute refusal to negotiate the issue upon CSEA's demands, constitutes a violation of EERA. (Sierra Joint Community College District (1981) PERB Decision No. 179.)

Here, CSEA demanded, on two separate occasions, to negotiate the shift changes implemented by the District. The District refused. The refusal was a violation of section 3543.5(c). This same conduct also denied CSEA its' rights under EERA to represent its members in violation of section 3543.5(b). In addition, the conduct interfered with employee rights to be represented by CSEA, a violation of section 3543.5(a).

CONCLUSIONS

Based upon the entire record in this case, it has been found that the District breached its obligations under EERA to negotiate with CSEA when it unilaterally changed the shift assignments of Mojarro and Gunns.

As a result of this conduct, it is found that the District violated section 3543.5(c). This conduct also interfered with CSEA's right to represent its members in their employment relations with the District in violation of section 3543.5(b). In addition, the same conduct interfered with individual unit members' rights to be represented by their chosen representative

in their employment relations with the District in violation of section 3543.5(a).

Further, it has been found that the District violated the EERA by its absolute refusal to bargain the change in shift assignments. This refusal constitutes a violation of section 3543.5(c). Violation of section 3543.5(b) also occurred, as the refusal denied CSEA its rights under EERA. Finally, the District, by its refusal to negotiate the shift changes, interfered with employee's right to be represented by CSEA, violated section 3543.5(a).

REMEDY

PERB is empowered to issue a decision and order directing the offending party to cease and desist from an unfair practice and to take such affirmative action as will effectuate the policies of EERA. (See section 3541.5(c).)

It is appropriate to order the District to cease and desist from making unilateral changes on matters within the scope of negotiations. It is appropriate in this case to order the District to return to the status quo ante, the conditions prevailing prior to its unlawful conduct. Here, the District should be ordered to rescind any unilateral change of shift policy, and at CSEA's request, return Mojarro and Gunns to the shifts they held before the District's action. The District should further be ordered to bargain with CSEA, upon CSEA's request, any new policy on shift changes of incumbent employees.

Because the District has been found to have denied CSEA its right to represent its bargaining unit employees, and to have interfered with employees rights to be represented by CSEA, it is also appropriate to order the District to cease and desist such denial and interference.

It is further appropriate that the District be directed to post a notice incorporating the terms of the order. Posting of such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of EERA that employees be informed of the resolution of this controversy and the District's readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in the case, the Moreno Valley Unified School District (District) has been found to have violated the Educational Employment Relations Act (Act), Government Code section 3543.5(a), (b) and (c), by its unilateral change of shift assignments of Manuel Mojarro and Caroline Gunns, and by its absolute refusal, upon the California School Employees Association and its Chapter 410's (CSEA) demand to negotiate the shift changes.

Pursuant to section 3541.5(c) of the Government Code, it is hereby ordered that the District and its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with CSEA as the exclusive representative of the District's classified employees by unilaterally changing shift assignment of employees.

2. Refusing, upon CSEA's demand, to negotiate shift changes of bargaining unit employees.

3. By the same conduct, denying to CSEA rights guaranteed by the Act, including the right to represent its members.

4. Further, by the same conduct, interfering with employees in the exercise of their rights guaranteed by the Act, including the right to be represented by their chosen representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Rescind the unilateral change of shift assignment policy insofar as it applies to incumbent employees.

2. Upon CSEA's request, immediately meet and negotiate with CSEA regarding involuntary shift reassignments.

3. Upon CSEA's request, return custodians Mojarro and Gunns to the shift assignments they held prior to March 1993.

4. Within ten (10) workdays of the service of a final decision in this matter, post at all school sites and all work

locations where notices to employees are customarily placed, copies of the notice attached hereto as an Appendix. The notice must be signed by an authorized agent of the District indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered by any other material.

5. Upon issuance of a final decision, submit written notification of the action taken to comply with the Order to the Sacramento Regional Director of the Public Employment Relations Board in accord with the Regional Director's instruction. All reports to the Regional Director shall be served concurrently on the charging party herein.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later

than the last day set for filing . . ." (See Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

Gary M. Gallery
Administrative Law Judge